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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,902	03/01/2002	Joseph W. Hundley		3526

7590                  05/18/2004

THE TECHNOLOGY LAW OFFICES OF VIRGINIA  
P.O. Box 818  
Middleburg, VA 20118

EXAMINER
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TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/086,902	HUNDLEY, JOSEPH W.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cephia D. Toomer	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 February 2004.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 44-62 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 52-54 is/are allowed.  
 6) Claim(s) 44-51 and 55-62 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ .  |

## **DETAILED ACTION**

This Office action is in response to the amendment filed February 25, 2004. It should be noted that the previous claims ended with claim 43. Therefore, the new claims have been renumbered as 44-62.

The Double Patenting rejection over copending application 09/757765 is withdrawn in view of the Applicant canceling the claim in question.

The previous rejection of the claims under 35 USC 112, second paragraph is withdrawn in view of applicant canceling the claims in question.

The 103 over CN 1031363 and Borenstein are withdrawn in view of applicant canceling the claims.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 44 and its dependents are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

3. The specification does not support stearic acid or other fatty acid neutralized with a base. At page 15, applicant states that stearic acid and other fatty acids are neutralized with only ammonia.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 57-59 and 61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 57-58 are dependents of a canceled claim.

In claim 61, it is not clear if the claim recites ½% to 70% paraffin and stearic acid are present or in the absence of paraffin and stearic acid the composition comprises ½% to 70% other fatty acids. Clarification and correction are required.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 44-47 and 55-57, 59 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by CN 1290729.

CN teaches a composition comprising NaOH (base), ammonia water, stearic acid, paraffin wax, titanium dioxide and water (see abstract in its entirety). CN inherently teaches the method of assisting complete combustion since the method steps

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of the present invention only require that the composition be applied to the material. CN teaches that the composition of his invention coats construction material.

Accordingly, CN teaching all the limitations of the claims, anticipates the claims.

8. Claims 44 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by CN 116650.

CN '650 teaches a solid fuel composition comprising stearic acid, paraffin wax, NaOH and water (see abstract in its entirety).

Accordingly, CN '650 teaching all the limitations of the claims, anticipates the claims.

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 44, 48-50, 55, 57-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sinnige (5,968,237).

Sinnige teaches a water-base emulsion composition comprising 30-60% hydrocarbon wax (100 parts), 0.01-50 parts alkyl acid, polyvinyl alcohol and 0.01-5 parts stabilizers (see abstract; col. 4, lines 17-36). The hydrocarbon wax may be paraffin or slack wax (see col. 2, lines 54-57) and the alkyl acid is an acid that has from 18 (stearic) to more than 200 carbon atoms (see col. 2, lines 63-66). Sinnige teaches that

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the stabilizer may be an alkali metal hydroxide (base) or ammonium hydroxide, suggests Na or K (see claim 12). Sinnige teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Sinnige differs from the claims in that he does not specifically teach that the acid is neutralized with a base (claim 44). However, it would be reasonable to expect that this reaction takes place because Sinnige teaches an amount of base that would neutralize the acid.

In the second aspect, Sinnige does not specifically teach the claimed method of assisting combustion of a material (claim 55). However, since applicant's only step in the method is to apply the composition to the material, then it would be reasonable to expect that when the composition of Sinnige is applied to a material that the composition assists combustion of the material, absent evidence to the contrary.

In the third aspect, Sinnige does not specifically teach that the base is used to adjust the pH (claims 57 and 61). However, given that the composition contains 0.04 to 5 parts of the stabilizer (base) it would be reasonable to expect that the stabilizer adjusts the pH of the composition.

11. Applicant's arguments have been fully considered but they are not persuasive.
12. Applicant argues that Sinnige requires polyvinyl alcohol whereas the present invention does not.

Throughout the specification, applicant teaches that the composition of his invention may contain polyvinyl alcohol. Therefore, the presence of polyvinyl alcohol does not materially affect the characteristics of the composition.

With respect to Sinnige not teaching a fatty acid neutralized with a base, it would be reasonable to expect that this reaction takes place because Sinnige teaches an amount of base that would neutralize the acid.

Claims 52-54 are allowable because the prior art fails to teach or suggest the addition of 4.5% titanium oxide to a composition containing 46.3% slack wax, 2.0% other wax, 0.2% ammonia and 47% water.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursdays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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